

## How Lawyers are Disciplined

The NC State Bar has been in the news recently regarding several high profile cases involving alleged lawyer misconduct. It is obvious from accounts in the press and from communications we have received that some aspects of our work are not well understood. Given the considerable public interest in our pending disciplinary action against Michael B. Nifong arising from the Duke lacrosse case, this is a good time to explain a few things about professional discipline.

1. **The State Bar is not the “Bar Association.”** The State Bar is a state government agency responsible for regulating lawyers. It has the power to establish a code of ethics for the profession, and to investigate and prosecute lawyers for violations of that code. All lawyers licensed by the state of North Carolina are required to belong to the State Bar and to support its administration with their annual dues. The *North Carolina Bar Association* is a voluntary private professional association. The Bar Association has nothing to do with the disciplinary process.
2. **Disciplinary proceedings are public proceedings.** The State Bar investigates hundreds of cases each year, receiving reports from a variety of sources including citizens, lawyers, judges, and the media. Once a confidential investigation is completed and the State Bar’s Grievance Committee decides there is a reasonable basis to believe that a lawyer has violated the Rules of Professional Conduct, a formal complaint is filed on the public record before an independent administrative court known as the Disciplinary Hearing Commission (DHC). This initiates a completely transparent process that culminates in a trial at which the media and the public are welcome.
3. **The State Bar prosecutes disciplinary cases; it doesn’t decide them.** The DHC sits as the judge and jury in disciplinary cases. It is composed of 20 members: 12 lawyers appointed by the State Bar and eight non-lawyers appointed by the governor and the General Assembly. Sitting in panels of three, which always include a non-lawyer, the DHC conducts the trials, finds the facts, applies the law, and alone decides which disciplinary sanctions, if any, are appropriate. Once a trial is over, either side can appeal to the North Carolina Court of Appeals if it believes errors of law have occurred.
4. **Disciplinary proceedings are civil proceedings.** The DHC is a court of record, much like the state superior court. The State Bar, as the plaintiff/prosecutor, is represented by its legal counsel. The defendant lawyer also has a right to be represented by counsel. The State Bar has the burden of proving its case by evidence that is clear, cogent, and convincing. Matters are decided purely on the evidence presented. Public opinion is not admissible.
5. **Disciplinary proceedings concern the lawyer’s license to practice.** The DHC can dismiss a case, issue a letter of caution or a letter of warning, or impose an admonition, a reprimand, or a censure. The DHC can also suspend a lawyer’s license to practice law for a definite period not to exceed five years. Finally, the DHC can disbar a lawyer. Disbarment means that the lawyer is no longer licensed to practice law in North Carolina. The DHC cannot impose criminal penalties like fines or terms of imprisonment. It cannot remove a public official from office or require a lawyer to withdraw

from a case. It has no authority to order that damages be paid to persons who may have been injured by a lawyer's misconduct.

6. **The purpose of professional discipline is protection of the public.** In imposing a disciplinary sanction, the DHC's primary duty is to discipline the offending lawyer in the way that is most likely to prevent harm to the public. The DHC takes into account relevant aggravating and mitigating evidence about the defendant lawyer and his or her conduct when determining the appropriate disciplinary sanction.
7. **Disciplinary cases are independent of other related cases.** Although disciplinary cases may concern allegedly improper conduct in other civil or criminal cases, they are separate and independent. A disciplinary case does not terminate when a related civil or criminal matter is dismissed. The only parties to a disciplinary case are the State Bar, which is the plaintiff, and the accused lawyer, who is the defendant. Other persons who may have been injured or otherwise offended by the lawyer's conduct are not parties to proceedings before the DHC, although they may be called as witnesses.

The disciplinary procedures described above have been in place since 1977. Since that time they have openly facilitated justice and protected the public's interest in hundreds of cases. During the last ten years alone, lawyers have been disbarred or suspended in 373 cases. Interested members of the public wishing to learn more can find additional information on the State Bar's website at [www.ncbar.gov](http://www.ncbar.gov).

L. Thomas Lunsford, II  
Executive Director  
NC State Bar  
Raleigh, NC